

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

ROWVAUGHN WELLS, Individually and as
ADMINISTRATRIX AD LITEM of the Estate of
TYRE DEANDRE NICHOLS, Deceased,

Plaintiff,

v.

No. 2:23-cv-2224-MSN-atc

CITY OF MEMPHIS, a municipality,
CHIEF CERELYN DAVIS, in her official capacity,
EMMITT MARTIN III, in his individual capacity,
DEMETRIUS HALEY, in his individual capacity,
JUSTIN SMITH, in his individual capacity,
DESMOND MILLS, JR., in his individual capacity,
TADARRIUS BEAN, in his individual capacity,
PRESTON HEMPHILL, in his individual capacity,
ROBERT LONG, in his individual capacity,
JAMICHAEL SANDRIDGE, in his individual capacity,
MICHELLE WHITAKER, in her individual capacity,
DEWAYNE SMITH, in his individual capacity, and
as an agent of the City of Memphis,

Defendants.

**DEFENDANTS PRESTON HEMPHILL AND DEWAYNE SMITHS’
MOTION TO DISMISS**

COME NOW Defendants Preston Hemphill and Dwayne Smith, individually, through counsel, and file this Motion to Dismiss the Complaint,¹ noting in support the following:

1. Plaintiff’s Complaint fails to state a cause of action against them in their individual capacities under both Federal and Tennessee state law.

¹ Although not addressed in this motion, Defendant Officers are in no way waiving any of their affirmative defenses, including but not limited to the defense of qualified immunity.

2. Plaintiff lacks proper capacity and/or standing to bring this cause of action, which may only be brought by Tyre Deandre Nichols' (the "Decedent") minor child, the *sole party in interest* for any causes of action which survives the decedent. *Marine v. City of Chattanooga*, No. 1:09-cv-219. 2009 U.S. Dist. LEXIS 109825 (E.D. Tenn. Nov. 24, 2009) (emphasis added).

3. Plaintiff's Complaint fails to state a claim under the Fourteenth Amendment.

4. Defendant Officers are immune from suit under the Tennessee Governmental Tort Liability Act. *Robinson v. City of Memphis*, 340 F.Supp.2d 864 (2004); *Pinnix v. Pollock*, 338 F.Supp.2d 885 (2004).

5. Defendants Hemphill and Smith specifically incorporate by reference, as if fully stated herein, those arguments also applicable to them as set forth in Defendant City of Memphis' Motion to Dismiss and Memorandum in Support filed in this case at Docket Entry Nos 81 and 81-1, including the arguments regarding the official capacity claims against Dewayne Smith and the state law claims for intentional and/or negligent infliction of emotional distress and fraudulent misrepresentation.

Based upon the above referenced arguments, Defendants Hemphill and Smith respectfully move this Court to dismiss Plaintiff's claims against them in their individual capacities.

Respectfully submitted,

**GODWIN, MORRIS, LAURENZI
& BLOOMFIELD, P.C.**

s/ Mary Elizabeth McKinney
Mary Elizabeth McKinney (TN Bar #21597)
Deborah E. Godwin (TN Bar #9972)
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CERTIFICATE OF SERVICE

I, Mary Elizabeth McKinney, hereby certify that on October 16, 2023, I filed a copy of the foregoing with the Court via the Court's ECF system, and that upon filing, a copy will be sent via the Court's ECF system to all registered parties in this case.

I further certify that there are no non-registered parties in this case.

s/ Mary Elizabeth McKinney
Mary Elizabeth McKinney